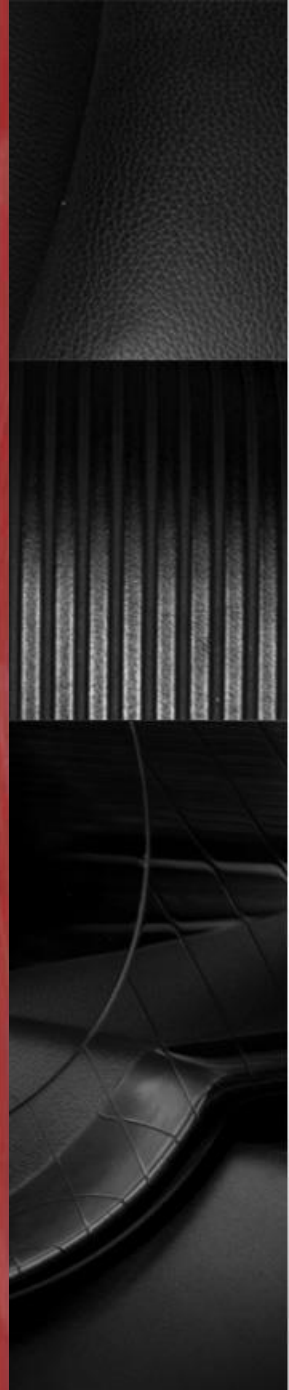


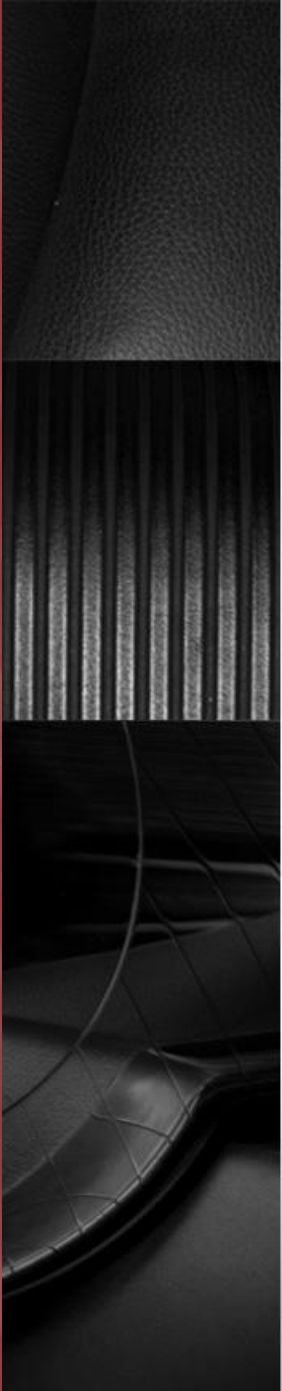
# Section 504 Updates and Review

September 28, 2014

1:00-4:00



# Overview of Section 504





# What are the parts of the Section 504 regulations?

- **Section 504 has several areas of particular importance for schools:**
  - Subpart B – Employment Practices
  - Subpart C – Program accessibility
  - ***Subpart D – Requirement for pre-school, elementary secondary education***
  - Subpart E – Requirements for Post Secondary Education



# Is Section 504 funded like other federal programs?

- **NO**... There is no State or Federal funding provided to assist in complying with section 504.
- **All** costs are the **obligation** of the general school district/charter budget.
- **Many schools** have established a Section 504 line item in their general fund budget to cover necessary accommodations for individuals with disabilities.



# Section 504 Requirements

- **Child Find:** 34 CFR 104.32 (a) , to identify, locate and evaluate children that might have a disability.
- **For example:** A student is struggling in several of their classes. RTI interventions have been in place the student is doing better in some of their classes. However if the interventions are removed, the child returns to struggling in their classes.
- **This would be a red flag that the child needs to be evaluated for IDEA or Section 504.**
- **We will discuss “Child Find” when it comes to medical needs later in the presentation.**



# Section 504 Requirements

- **FAPE:** 34 CFR 104.33 (c) *Free education* -- (1) *General.* For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements



# **What schools need to know about Section 504**

- **Students in school settings fall under the protection of Section 504, which prohibits discrimination on the basis of disability from all school programs and activities in both public, charter and private schools receiving direct or indirect federal funding.**



# How does Section 504 relate to Schools?

- Section 504 is the other service option available to students with disabilities **who are not already eligible and receiving special education services under the eligibility requirements of the Individuals with Disabilities Education Act (IDEA).**
- Section 504 is designed to provide equal access and fairness in general education to students with disabilities, thereby **leveling the playing field** for them through what is known as a **Section 504 Accommodation Plan.**
- It is **NOT** a plan designed to enhance a student's performance. It is only a plan to provide **fairness and equal access** to education.





# Who is Eligible under Section 504?

- **The student is "disabled"** if (i) the student has a physical or mental impairment that substantially limits one or more major life activities, (ii) the student has a record of such impairment, or (iii) the student is regarded as having such an impairment.

*34 CFR 104.3(j)(1)*

- Most often an impairment with a duration of 6 months or less **is NOT** a disability, however obtain duration of the injury data from the doctor.
  - **Serve students with temporary injuries regardless of expected duration.**

*Source: Section 504 Compliance Advisor, 10/2009*



# Who is eligible for a Section 504 Accommodation Plan?

- **A student is eligible for a Section 504 Accommodation Plan** if an evaluation shows that the student has a mental or physical impairment that substantially limits one or more major life activities and or a major bodily function and it impacts the student's education.
- **NO** medical diagnosis is required for Section 504 eligibility.
  - "Section 504 does not require that a school district conduct a medical assessment of a student who has or is suspected of having ADHD unless the district determines it is necessary in order to determine if the student has a disability."



# List of Substantially Limiting Disabilities

- **Major Life Activities: (42 U. S. C. 12102)** In general (A) major life activities include, but are not limited to, Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending speaking, breathing, learning, reading, concentrating, thinking, communicating & working.
- (B) **Major bodily functions: a major life activity also includes the operation of a major bodily function, including but not limited to,** functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. *(ADA amendments act update, 1-8-2010)*



# List of Substantially Limiting Disabilities

- **List Includes: (list is non-exhaustive, meaning it can be added to)**
  - Autism, Cancer, Cerebral Palsy, Diabetes, Epilepsy, HIV & Aids, Attention Deficit Disorder, Attention Deficit Hyperactivity Disorder, **Central Auditory Processing Disorder, Obesity**, Multiple Sclerosis, Muscular Dystrophy, Major Depression, Bipolar disorder, Post-traumatic Stress disorder, and Schizophrenia (*Obesity is different because it effects each individual differently, some individuals may be very limited by their impairment while some may not be effected at all. )*
- **Likely but NOT obviously "Substantially Limiting":** Reaching, sitting, interacting with others, hemic, lymphatic, & muscular and skeletal systems



# What are the “Red Flags”?

- When a student is evaluated and does not qualify for special education services under IDEA
- When a parent frequently expresses a concern about their child’s performance
- When a suspension or expulsion is being considered for a student
- When retention is being considered
- When a student shows a pattern of not benefiting from classroom instruction
- When a student returns to school after a serious illness or injury
- When a student exhibits a chronic health condition



# What are the “Red Flags”?

- When a student has been identified as having attention deficit disorder (ADD) or Attention deficit hyperactivity disorder (ADHD)
- When substance abuse is an issue- the individual must have stopped using the substance and should either be in rehabilitation or have gone through the rehabilitation process
- When a disability of any kind is known or suspected
- When a new building or remodeling is being considered
- When a student shows a pattern of not benefiting from classroom instruction **or continual failing grades**

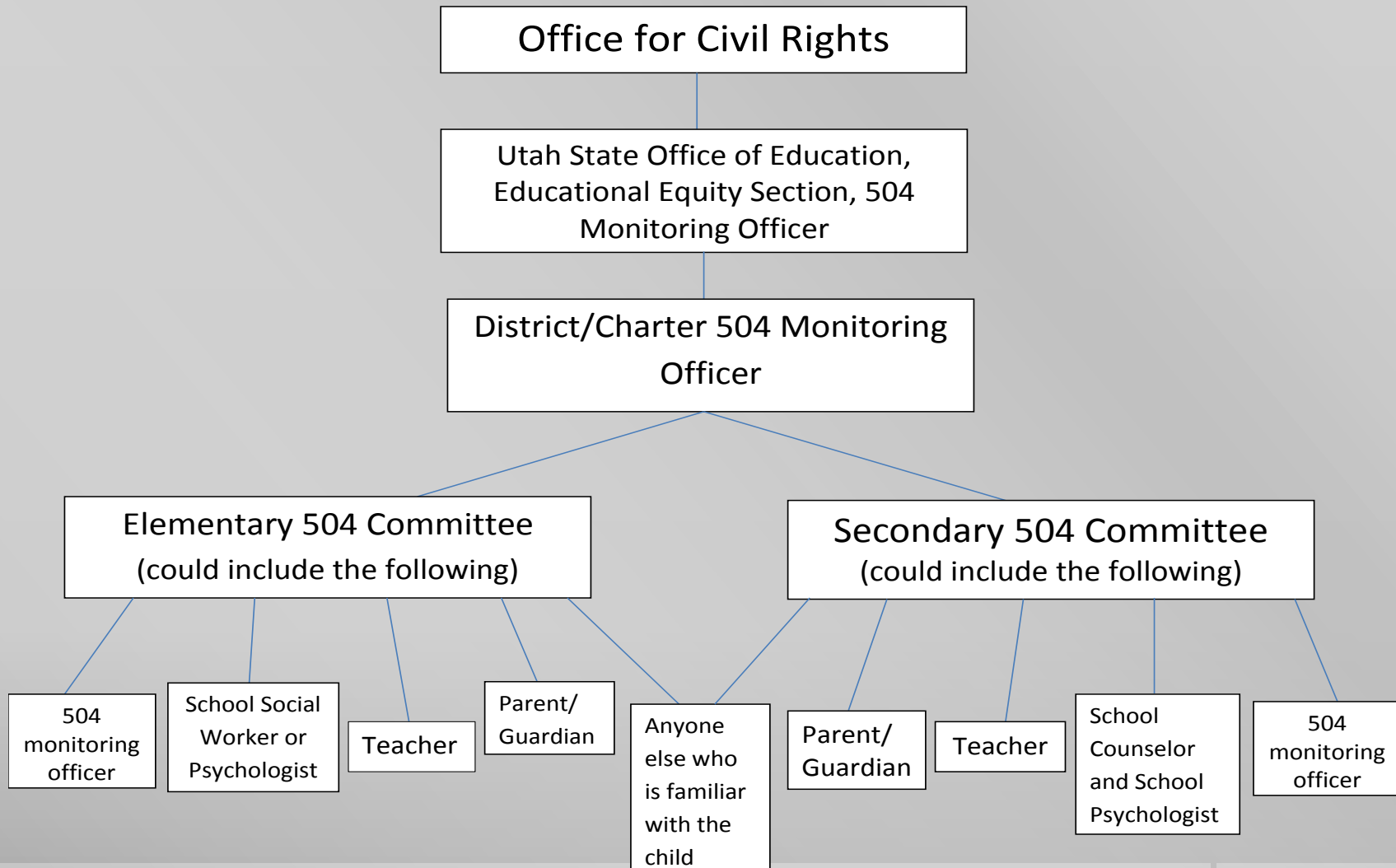


# Who should be on a Section 504 team?


- Ensure that the placement decision is made by a group of persons, **including persons knowledgeable** about the child, meaning of the evaluation data, and the placement options.

*34 CFR §104.35 (c) (3)*

# Section 504 Flow Chart







## **Section 504 Evaluation, What information should you consider?**

- You may choose to use the same process to evaluate students for Section 504 as students are evaluated for IDEA.
- Tests used for a Section 504 evaluation should be selected so the test results accurately reflect the student's aptitude or achievement.
- The 504 team should draw information from a variety of sources. All sources must be documented and significant factors to the students learning must be documented.
- The sources and factors may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background and adaptive behavior.



# Mitigating Measures

- **Can the District/Charter school refuse services based on mitigating factors?**

Decisions to provide services **must** be made with **disregard** for mitigating factors.

- **ADA List of Mitigating factors:**

Medication

Medical supplies, equipment or appliances

Low-vision devices(*which do not include ordinary eyeglasses or contact lenses*);

Prosthetics

Hearing aids or implants

Mobility devices

Oxygen therapy equipment

The use of assistive technology and

Learned behavioral or adaptive neurological modifications

Surgical intervention (EEOC expanded ADA list by adding)



# How significant is the disability, is it substantially limiting?

- **Definition of substantial limitation**

- If the disability substantially *limits* the ability of an individual to perform “a major life activity” compared to the average person in the general population.

*29 CFR 1630.2 (j) (May 25, 2011)*

- **Educators must** rigorously review and discuss all available information in regards to the student. Resources consist of current academic status, behavioral performance, progress monitoring, classrooms assessments, work samples, student’s progress reports, and school history such as attendance, transiency, students CRT results and/or a medical diagnosis. *(Sraga Hauser LLC, © 2011)*



# Can a parent elect to have their child served by Section 504, when they are eligible for IDEA?

- **No**, although some parents wish to not have their child labeled as special education recipient. OCR has stated in no uncertain terms that parents have no such flexibility. In a letter to McKethan, 25 IDELR 295 (OCR 1996) OCR stated that it is impermissible for a student's parent to refuse IDEA and require the district to develop an IEP under Section 504.
- A rejection of IDEA is a rejection of Section 504. Also a district has no flexibility to opt to provide services and accommodations under Section 504 when the student is IDEA eligible. Yankton Sch. Dist. V. Schramm, 24 IDELR 704 (8<sup>th</sup> Cir. 1996)



# 2012 Circuit Court Decision

- A student cannot be served under Section 504 if the parent/guardian chooses to revoke services under IDEA based on the IDEA Part B regulations 2008. A recent court case *Lamkin v. Lone Jack C-6 School District*, 58 IDELR 197 (W.D. Mo.2012), takes the position that parents who revoke consent for special education services are also revoking consent for services under Section 504.

*Adapted from Section 504 compliance advisor, vol. 16 Iss. 4, p 3*



# **What is happening in the courts regarding revocation of IDEA and requesting Section 504?**


**BK v. Douglas County School District, U.S. District Court, CO. February 25, 2013**

- Parents revoked the IEP and special education.
- The district offered the same plan via a Section 504 plan which the parents revoked.
- The court concluded that the parents could not hold the district liable for failing to provide accommodations because they rejected the Section 504 plan.
- The court also observed that the district's obligation to protect the student from disability discrimination included a duty to continue to provide services for the student to ensure the student had the opportunity to receive FAPE.




## **What if you want more information beyond the overview?**

- Go to Section 504 2013 Training at;  
<http://www.schools.utah.gov/equity/Section-504-Training.aspx>
- If you have further questions, call Jennifer Slade at 801-538-7647 or
- email at  
[Jennifer.Slade@schools.utah.gov](mailto:Jennifer.Slade@schools.utah.gov)



How do you  
address needs of  
students with  
medical needs?





# What is the districts/charter schools duty to evaluate students with medical needs and excessive absences?

- In Hamilton (OH) local School District, 58 IDELR 82 (OCR 2011), The school was aware of a first grade student who had absences related to her chronic hypoglycemia and migraines. The district began truancy proceedings against her and reassigned her to an online program.
- Her parent filed due process alleging the district denied her daughter FAPE.
- OCR stated that Section 504 requires districts to provide qualified students with disabilities FAPE.
- The investigation found that the school district *habitually failed* to evaluate students for 504 eligibility after becoming aware of the students physical and mental impairments that impacted their attendance.



# What steps should you take to evaluate a student with a medical disability?

- 1. Train your staff on its child find duty:** When a staff member has knowledge that a student has a medical condition, they should refer the student to the 504 coordinator or team who assesses at-risk students.
- 2. Communicate often with the attendance office:** The attendance office not only knows when a student is absent, but why they are absent. They know if a child exceeds a certain number of absences or if there is a pattern, such as a student with frequent absences due to migraines.
- 3. Contact the parents and let them know of the schools obligation to evaluate:** Inform them the district can help if a disability or medical condition is the reason for the absences.



# What steps should you take to evaluate a student with a medical disability?

**4. Gather information from parents:** Teachers and staff can often report whether the child presents symptoms that suggest a disability. However, the school must do their best to gather information from parents. Keep documentation of all your efforts through phone calls, email, or letters to gather information. If parents file a complaint with OCR if district pursues state truancy proceedings, the district can show that made an effort to conduct an evaluation.

**5. Evaluate a student for Section 504 eligibility even if they have a health plan:** Some students with medical needs may already have an Individual Health Plan (IHP). Remember, do not take mitigating measures into account when determining eligibility.



# What steps should you take to evaluate a student with a medical disability?

**6. Ask for consent to speak to the students medical provider:** Ask parents for a list of medical providers treating the student and permission to speak with them.

**7. Convene a Section 504 team with those who have knowledge about the child.** This team would most likely consist of the principal, school nurse, parents, and teachers. This team would know about how their medical condition impacts the student's learning and attendance.



# 2010 OCR Case

Yosemite (CA) Unified School District, 55 IDELR 111 (OCR 2010). A student with migraine headaches, and the request for enrollment in an independent work study should have promoted a Section 504 evaluation. OCR found that this misstep resulted in a denial of FAPE.

- Districts should have procedures in place for serving students with medical needs.
- It should include a timeline. (Recommended ‘best practice’ is that an at-risk team meeting should be convened within **10 days** of knowledge of a student's medical needs.)



# 2010 OCR Case

- Team should discuss ways to diminish symptoms during the school day.
- “The main lesson from this case is not a new one,” according to Nathanya Simon, a school attorney. “It’s the schools obligation to convene a meeting and make sure there is documentation and consultation with a parent before they make any changes that affect the child’s education on a daily basis.”
- If the Section 504 plan is not successful and the student continues to miss extended periods of school. Best practice would be to reevaluate the child and consider **homebound instruction**. However, this should be the least restrictive environment.



## **What is the difference between home instruction, and homebound services?**

- Home instruction is a placement on the Least Restrictive Environment (LRE) continuum.
- Homebound is available to all students with temporary illnesses or injuries, regardless of their disability status.



# What is the Utah State law regarding home instruction/ homebound placements?

277-419-5A(f)(ii)

(ii) Have direct instructional contact with a **licensed educator** provided by the LEA at an LEA-sponsored center for tutorial assistance or at the student's place of residence or convalescence for at least 120 minutes each week during an expected period of absence, if physically excused from such a facility for an extended period of time, due to:

- A. Injury, illness, surgery, suspension, pregnancy, pending court investigation or action; or
- B. An LEA determination that home instruction is necessary.






# Can homebound students participate in school activities?


In *Mowery v. Logan County Board of Education*, 58 IDELR 192 (S.D. W. Va. 2012)

- A school district barred a homebound high schooler from entering a senior dance. They stated if he was too sick to attend school he was too sick to attend the dance.
- The court state that denying the student entrance into the dance could be seen as a pattern of exclusion.
- At the very least even a temporary disabling condition is covered under Section 504. So not allowing a homebound student with a disability to participate in school activities can amount to disability discrimination.



# **What can you do to prevent possible discrimination for homebound students who want to attend school activities?**

- Provide homebound students with notice of school activities.
- Discuss extracurricular activities at 504 meeting.
- Look at each student's ability to participate in extra curricular activities individually. Avoid blanket statements such as; "If you're too sick to come to school, you're too sick to attend these events."
- If the student is contagious, consider precautions. Consult with your school nurse.
- Know when to reconsider whether homebound placement is still the student's LRE. If a student can attend school activities, there is a good chance they can attend a few hours of school each day.



# What do you consider a major life activity when evaluating a student with a medical need for Section 504?

- Consider more than just “learning” as a major life activity when evaluating a student for Section 504 eligibility.
- A case in Memphis (MI) Community Schools, 54 IDELR 61 (OCR 2009), the school took the position that a student with Asthma only qualified for Section 504 if their disability impacted the major life activity of “learning”.
- After the district received training on the ADA Amendments, They now are basing determination of eligibility based whether one or more of student’s major life activities are substantially limiting. They are also looking at if a student is limited by a mental or physical impairment.




# **What do you consider a major life activity when evaluating a student with a medical need for Section 504?**

- In Oxnard (CA) Union High School District, 55 IDELR 21 (OCR , 2009), a student who was diagnosed with irritable bowel (IBS) and another digestive condition was denied eligibility of a Section 504 plan.
- The OCR found the school in violation of the law because the school only considered “learning”. OCR said they should have also considered the major life activity of the digestive system.
- OCR also found that the school did not consider that the condition caused frequent absences and a declining GPA when they determined that his condition did not substantially limit his learning.

## Sample Procedures for Evaluation Students with Medical conditions for Section 504

Procedure	Date
1. Student at-risk team should be convened within 10 days of parents notifying the that their child has a medical need that may affect attendance and school performance	
2. Request permission to speak to medical providers regarding appropriate interventions, such as ways to prevent the condition from escalating. Have parents sign a form releasing child's medical records to school.	
3. Make a suggestion that parents get notes from the doctor to excuse the student's absences because of a medical condition. Provide missed work for the child to make up.	
4. Convene Section 504 team meeting to determine child's eligibility. If the medical condition substantially limits the ability to perform one or more major life activity or bodily functions, then develop a Section 504 plan with appropriate classroom supports and accommodations.	
5. Consider accommodations such as reducing or modifying assignments or allowing extended or adjusted time to complete assignments, when condition is active. Consider using technology to fill the gaps caused by missed instruction. (Such as taping lessons when taught)	
6. If not done, have school nurse complete an Individual Health Plan (IHP) with strategies for addressing symptoms of the medical condition, medication administration and their side effects. Attach the IHP to the Section 504 plan.	
7. Discuss how to avoid or reduce occurrences of the condition. For example; food, sounds, odors, stress, or weather changes.	
8. Be specific in the plan, as to who will assist the student in using techniques and strategies to ease the symptoms of the condition.	
9. Revise the plan in six weeks to determine if it is effective and make needed adjustments. Review data on grades, absences, and medical management.	
10. If the child continues to miss extended periods of school, the 504 team may want to reevaluate the child and consider temporary homebound instruction. Determine if homebound instruction is the Least Restrictive environment (LRE) to meet the child's needs.	



# How do you address episodic impairments?

- Episodic impairments can include but are not limited to; seasonal allergies or asthma, migraines and cystic fibrosis.
- Schools do commonly qualify students under Section 504 if the condition rises to the level of substantially limiting a major life activity even if it is episodic.
- Congress, according to David Richards is that students will not be found eligible because at time of evaluation the student not have a disability that substantially limits a major life activity.
- Data should be considered over a range of time. For example, a student who has heat induced asthma that may occur in August, September, April, and May, should not be evaluated in January when it is the medical condition is not substantially life limiting and not considering its impact when asthma is active.



# 2012 OCR Case

- Traverse City (MI) Area Public schools, 59 IDELR 144 (OCR 2012)
- This case is in regards to a student who is frequently absent due to multiple severe disabilities. His mother had requested multiple times for plan to put her son on automatic homebound services during ragweed season and times when he has other disability related illnesses.
- The district had a policy that stated a student with an IEP or Section 504 plan had to accumulate 15 days of school before a homebound placement could be requested.





# 2012 OCR Case

- OCR found that the district violated Section 504. Their refusal to modify their policies to provide the student educational services for foreseeable absences related to recurring or episodic conditions unnecessarily delayed the students receiving needed services.
- Teri Engler, a school attorney with Sraga Hauser, LLC in Oak Brook, Ill. States “Strict adherence to such rules or policies is likely to be incongruent with both laws (referring to IDEA and Section 504) requirements of making student-centered decisions based on individualized needs.


*January, 2013 Section 504 Compliance Advisor, Volume 16, Issue 11*





# Should you modify policies if incongruent with IDEA and Section 504 and how do you avoid mistakes?

- Understand the requirement to make reasonable modifications of policies and practice when modifications are necessary to avoid discrimination based on disability.
- Provide training so administrators and teachers understand the obligation to modify a policy or procedure. They need to know that Section 504 and IDEA require an individualized response.
- Administrators should encourage staff to share concerns with them. For example; one teacher modifies an attendance policy, but another teacher does not.
- Communicate with parents about their concerns. Work to foster trust and encourage them to discuss problems with you.




# What about students with mental illnesses, Should they be evaluated for Section 504?


- Yes, you should evaluate a student with mental illness. It is a medical condition and you should follow procedures for evaluating students with medical conditions.
- A student with a mental disability such as bi-polar disorder is almost always eligible according to OCR.
- The following major life activities most likely will be “substantially limiting for students with bi-polar. Learning, concentrating, sleeping, caring for themselves, and interacting with others (not ADA requirement).
- Keep good documentation



# What about students with mental illnesses, Should they be evaluated for Section 504?

- Eligibility should not just be based on grades.
- Get as much information from parents as possible.
- Ask for permission to speak to medical providers.
- Consider parent input.
- Discuss strategies for teachers. For example a student who is experiencing a mood swing may have a hard time getting started on an assignment. The teacher could break the project down into small steps and can assist the student in completing each step.

- 
- School Nurses Presentation
    - Online participants switch PowerPoints.



When does a student with a health plan also needs a Section 504 plan?



# Health Plan vs. Section 504 Plan

- Even if you think a child just needs a health plan to meet their needs, a Section 504 evaluation should be considered.
- If they qualify for section 504 and health plan complete them separately.
- OCR determined that a district's practice of providing health care plans to student with diabetes, instead of determining their eligibility for a 504 plan, was a violation of Section 504 child find requirements.  
Districts must evaluate a student's eligibility for a section 504 and related aids and services, rather than automatically writing a health care plan.

*Tyler (TX) Indep. Sch. Dist., 56 IDELR 24 (OCR 2010)*



## **Health Plan vs. Section 504 Plan**

- A district in Tennessee was found lax in not evaluating students with health plans for further special services such as Section 504 and IDEA.
- It was found that a district may not forgo evaluating a student with Asthma, food allergies, diabetes, or other health issues.
- If there is reason to suspect and student might need special education or related services, a determination must be made for Section 504 services and provided procedural safeguards.




# Health Plan vs. Section 504 Plan

Agreed upon corrective action:

- Have a policy to send pertinent information to the school nurse when student registers.
- The nurse immediately determines if the student needs more services than a health plan.
- If the **nurse** does determine an evaluation occur, **she/he** meets with other appropriate school or district staff, and parent (best practice) to determine if a Section 504 or IDEA evaluation are needed.

*Memphis City (TN) Sch. Dist., 112 LRP 26130 (OCR 04/23/12)*





**What do you need  
to know about  
service animals?**



## **Service Animal is defined to mean:**

- Any dog that has been individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability. Note that other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of the regulatory definition.


*2010 ADA, Title II regulations at 28 CFR 35.104*



# Work or Task of a Service Animal


**Work or task performed by the service animal must be directly related to the individual's disability.**

- Examples of task include but are not limited to:
- Assist individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing nonviolent protection or rescue, pulling a wheel chair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities to prevent or assist in impulsive or destructive behaviors. *28 CFR 35.104*



# Can a student have an animal at school for support?

- “A pet or support animal may be able to discern that the handler is in distress, but it is what the animal is trained to do in response to this awareness that distinguishes a service animal from an observant pet or support animal.” *75 Fed. Reg. 56, 193 (2010)*
- However, in 2010 the Department of Justice has stated, “support animals may be permitted as a reasonable accommodation under other laws, including the Fair Housing Act and the Air Carrier Act.” *75 Fed. Reg. 56, 166 (2010)* This would suggest that an emotional support animal might be under certain circumstances, qualify as a reasonable accommodation if necessary for the students receive FAPE. Even if the animal does not fit the definition of a service animal under Title II.



# What questions you can ask when a parent request a service animal for their child?

1. Is the animal required because of a disability?
2. What work or task has the animal been trained to perform? 28 CFR 36.302(C)(6)
  - You can't require documentation from medical provider or anyone else. However, you can ask for proof of the required shots for the animal before the service animal comes to school with the student. (see sample policies and procedures checklist)



# When can a service animal be excluded from the school?

- The animal is not with in the handlers control.
- The animal is not house broken.
- The presence of the animal would create a fundamental altercation in the nature of the program. *28 CFR 35.136(b)*

A service animal may fundamentally alter a program if another student in the classroom is allergic to dogs. However, you should take steps to work around that issue. For example moving one of the students to another classroom.

There may be times when the service dog is disruptive. For example the student may want to play football and their service animal jumps on other students when he/she gets tackled.

# Sample Policies and procedures for Service Animals

Parent/Guardian initials	Policies and Procedures
	1. All requests for student with disabilities to be accompanied by a service animal must be address <u>in writing</u> to the (Superintendent, Principal, or 504 Monitoring Officer) of (school/district office) at (address). It must include documentation of annual vaccinations. The written request must be delivered to the (school/district office) at least <u>10 business days</u> prior to the student bringing the animal to school or at school functions.
	2. The owners of a service dog must provide annual proof of a county license and vaccinations. (Follow license and vaccination laws for each individual county where school is located)
	3. All Service animals must be spayed or neutered. *1(see explanation on next page)
	4. Service animals must be treated for fleas and ticks and be kept free of fleas and ticks. *2 (see explanation on next page)
	5. Service animals must be kept clean to prevent shedding and dander *2 (see explanation on next page)
	6. The owners of the service animals are liable for any harm or injury caused by the animals to other students, school staff, visitors, and/or property. The owner must provide proof of current liability insurance coverage as required by the Board of Education.
	7. Only a dog, or in certain circumstances, a miniature horse can be a service animal.
	8. The service animal must be <u>required</u> for the student with a disability.
	9. The dog/minature horse must be "individually trained" to do work or task for the student with disability. NOTE: A "therapy animal" is not a "service animal" for the purpose of these policies and procedures.
	10. Special Provisions/Miniature Horses: The requests to permit a miniature horse to accompany a student or an adult with a disability, in school buildings, classrooms or at school functions, will be addressed on an individual basis taking into consideration: <ul style="list-style-type: none"> <li>• If the facility can accommodate the type, size, and weight of the miniature horse.</li> <li>• Whether the handler can sufficiently control the miniature horse.</li> <li>• Whether the animal is housebroken.</li> <li>• If the animals presence in a specific facility compromises legitimate safety requirements that are necessary for safe operations.</li> </ul>
❖ A Service Animal is, any dog that has been individually trained to do work or perform taks for the benefit of an individual with a disability. 2010 ADA, Title II regulations at 28 CFR 35. 104	

# Sample Policies and Procedures for Service Animals

Parent/Guardian initials	Policies and Procedures
	11. Owners of service miniature horses must provide annual proof of the vaccinations required by county. (Follow license and vaccination laws for each individual county where school is located)
	<p>12. A school administrator may ask a student with a disability or his/her parents to remove a service animal from a school building, a classroom, or from a school function if any one of the following circumstances occurs:</p> <ul style="list-style-type: none"> <li>• The animal is out of control and the animal's handler does not take effective action to control it.</li> <li>• The animal is not house broken.</li> <li>• The animal's presence would "fundamentally alter" the nature of the service, program, or activity.</li> </ul>
	<p>13. A service animal must have the following:</p> <ul style="list-style-type: none"> <li>• Harness, leash or other tether unless the student because of their disability is unable to use the harness, leash, or tether or the harness, leash or tether interferes with the service animals safe, effective performance of the task or work they are trained to do. However, the animal must be in the handler's control.</li> </ul>
	<p>14. The school system is not responsible for the care or supervision of the service animal. Which includes, walking the animal or responding to the animals need to relieve itself.</p> <ul style="list-style-type: none"> <li>• As well, the school district is not responsible for providing a staff member to walk the service animal or to provide any other care or assistance to the animal.</li> <li>• A student with a service animal is expected to care and supervise their animal. If a young child or student with disability is unable to care for or supervise their service animal, the parent is responsible for providing the care and supervision of the animal. Issues that are related to the care and supervision will be addressed on an individual case basis is the discretion of the building administrator. The school does reserve the right, but is not required , to provide care and supervision of a service animal. Such a decision will be made on a case-by-case basis by the building administrator.</li> </ul>

\*1. Schools must take steps to ensure that school environments are made a s safe for students with disabilities as they are for nondisabled students Virginia Beach (VA) City pub. Schs., 59 IDELR 54 (OCR 2012)

\*2. Spayed or neutered service animals are not distracted from the services they are trained to provide. (Such as running off when in heat)

*ADA Regulations, 28 CFR Part 35 (as amended 2010)*





# Utah State Law regarding Service Animals

## Title 62 A

- **§ 62A-5b-104. Right to be accompanied by service animal--Security deposits--Discrimination--Liability--Identification**

(1)(a) A person with a disability has the right to be accompanied by a service animal, unless the service animal is a danger or nuisance to others as interpreted under the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102:

- (i) in any of the places specified in Section 62A-5b-103; and
- (ii) without additional charge for the service animal.
- (b) This section does not prohibit an owner or lessor of private housing accommodations from charging a person, including a person with a disability, a reasonable deposit as security for any damage or wear and tear that might be caused by a service animal if the owner or lessor would charge a similar deposit to other persons for potential wear and tear.
- (c) An owner or lessor of private housing accommodations may not, in any manner, discriminate against a person with a disability on the basis of the person's possession of a service animal.



# Utah State Law regarding Service Animals continued

- (2) A person who is not a person with a disability has the right to be accompanied by an animal that is in training to become a service animal or a police service canine, as defined in Section 53-16-102:
  - (a) in any of the places specified in Section 62A-5b-103; and
  - (b) without additional charge for the animal.
- (3) A person with a disability is liable for any loss or damage caused or inflicted to the premises by the person's service animal.
- (4) A person accompanied by a service animal is encouraged to identify the animal by exhibiting one or more of the following:
  - (a) the animal's laminated identification card;
  - (b) the animal's service vest; or
  - (c) another form of identification.
- Laws 2007, c. 22, § 5, eff. April 30, 2007; Laws 2009, c. 110, § 2, eff. May 12, 2009; Laws 2012, c. 389, § 1, eff. May 8, 2012.

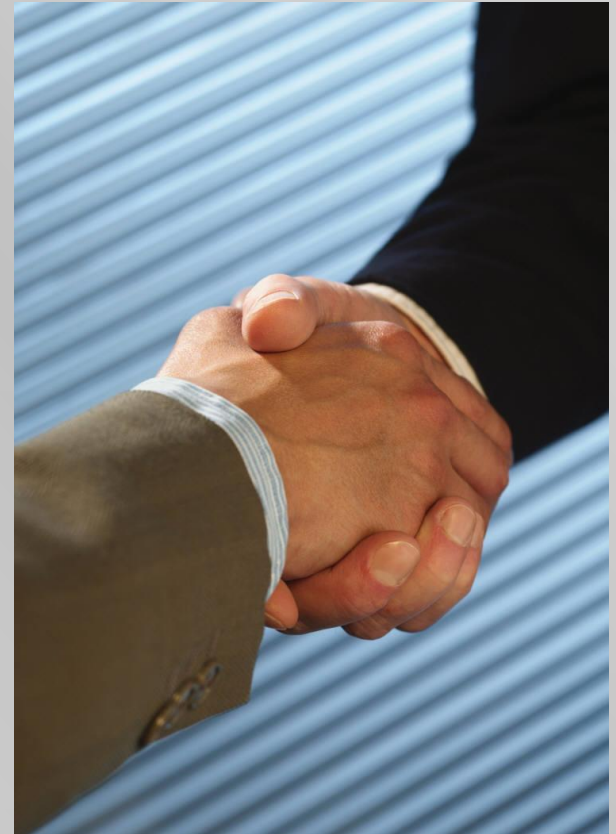
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## Partnering with State Risk

- \* Co-operative
- \* Coverage
- \* Consultation



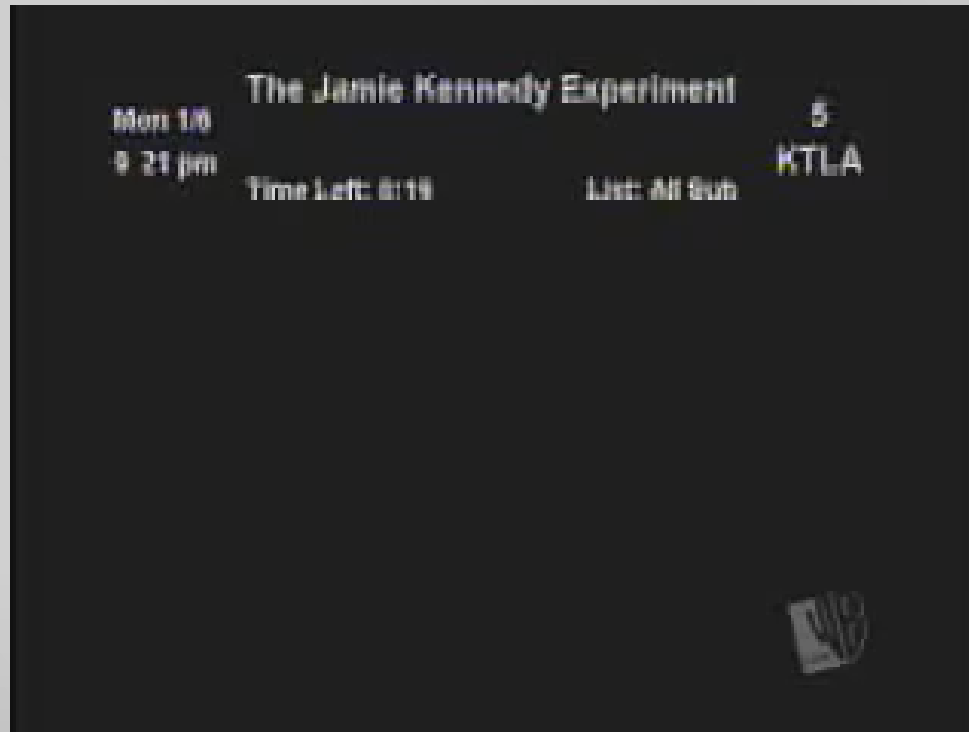
# Co-operative

- “Involving two or more people or groups working together to do something”
- Our Groups
  - 18 Institutions of Higher Education
  - 41 School Districts
  - 65 Charter Schools
  - 36 State Agencies



# Co-operative

- Our “something to do”





# Coverage

## **63A-4-204. School district participation in Risk Management Fund.**

(b) (i) Upon approval by the state risk manager and the board of education of the school district, a public school district may participate in the Risk Management Fund.

(3) (a) The state risk manager shall treat each participating public school district as a state agency when participating in the Risk Management Fund.

(b) Each public school district participating in the fund shall comply with the provisions of this part that affect state agencies.

# Coverage

- Liability
- Property
- Auto





# Coverage

## ■ Exclusions

- Students
- Contracts
- Injunctive Relief
- FLSA & GRAMA

\* Hazardous Activity List



# Consultation

- Human Resource Issues
  - Performance Management
  - Employee Discipline
  - Compliance
- Liability Issues
  - Claims
    - EEOC, UALD, OCR, DOL, DOJ, OSHA
  - Medical Issues
    - Fitness for Duty Examinations
    - Reasonable Accommodation

